UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AIR-FLO WINDOW CONTRACTING CORP.[1]	)	
	)	
Employer	)	
	)	Case No. 29-RC-11219
AMALGAMATED INDUSTRIAL UNION, LOCAL 76B, INTERNATIONAL UNION OF ELECTRICAL WORKERS-COMMUNICATION WORKERS OF AMERICA	)	
	)	
Petitioner	)	

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Air-Flo Window Contracting Corp., herein called the Employer, manufactures wood windows and installs both windows and doors. Amalgamated Industrial Union, Local 76B, International Union of Electrical Workers-Communication Workers of America, herein called the Petitioner, filed a petition with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a bargaining unit consisting of all full-time and regular part-time employees employed by the Employer at its 194 Concord Street, Brooklyn, New York, facility, **but excluding** all clerical employees, guards and supervisors within the meaning of the Act.[2]

[1] The name of the Employer appears as amended at the hearing.

[2] The unit description appears as amended at the hearing.

A hearing was held before Nancy Reibstein, a Hearing Officer of the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Employer takes the position that the Employer-wide unit sought by the Petitioner is inappropriate because the installers should be in a separate bargaining unit. The Petitioner takes the position that an Employer-wide unit is appropriate. The parties stipulated that there is no collective bargaining history between the Petitioner and the Employer.

In response to the Hearing Officer's request for an offer of proof, the Employer's president[3] offered to provide the lead installer as a witness. The Employer asserted that the lead installer would testify that (1) the installers, unlike other employees, spend 99 per cent of their time in the field, away from the facility, (2) the installers install products manufactured by both the Employer and other companies, and (3) the installers wear uniforms, and other employees do not. I find that the facts contained in the Employer's offer of proof, even if proved at a hearing, would not be sufficient to render an Employer-wide unit inappropriate.

Both parties were given the opportunity to submit briefs.

I have considered the arguments presented by the parties. As discussed below, I have concluded that the Employer-wide unit sought by the Petitioner is appropriate. The reasoning that supports my conclusion is set forth below.

[3] The Employer was not represented by counsel.

DISCUSSION

Section 9(b) provides that the Board "shall decide in each case whether…the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." In deciding whether a petitioned-for unit is appropriate, the Board starts with the premise that "the plain language of [Section 9(b) of] the act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit." *See Overnite Transportation Co*., 322 NLRB 723 (1996). Accordingly, it is well-established that "there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf'd*, 190 F.2d 576 (7th Cir. 1951). Because employer-wide units are "the first ones delineated as appropriate in Section 9(b) of the Act, upon which the Board's authority to establish collective-bargaining units rests," they are presumptively appropriate. *Montefiore Hospital*, 261 NLRB 569, 573 (1982); *see Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998); *see also Beverly Enterprises*, 341 NLRB No. 38, slip op. at 1 n. 2 (2004). Although a unit consisting solely of the Employer's installers might also be appropriate, the factors recited by the Employer herein are insufficient to rebut the presumption that the Employer-wide unit sought by the Petitioner is appropriate.

Because I have concluded that the unit sought by the Petitioner is appropriate, I will direct an election in the petitioned-for bargaining unit.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Air-Flo Window Contracting Corp., herein called the Employer, a domestic corporation with its sole office and place of business located at 194 Concord Street, Brooklyn, New York, herein called its Brooklyn facility, has been engaged in the manufacture of wood windows and the installation of wood, aluminum, storm and other doors and windows. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, derived gross annual revenues in excess of $500,000 and purchased and received at its Brooklyn facility, goods and materials valued in excess of $5,000 directly from points located outside the State of New York.

Based upon the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a)(1) of the Act:

All full-time and regular part-time employees employed by the Employer at its 194 Concord Street, Brooklyn, New York, facility, **but excluding** all clerical employees, guards and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by Amalgamated Industrial Union, Local 76B,

International Union of Electrical Workers-Communication Workers of America, or by no labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **August 24, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **August 31, 2005.** The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: August 17, 2005, Brooklyn, New York.

_____

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201